

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

SYLVESTER KIMBLE,)
)
Plaintiff,)
)
v.) Case No. CIV-22-00965-JD
)
LT. FNU RUSSELL, et al.,)
)
Defendants.)

ORDER

Plaintiff Sylvester Kimble filed a complaint on November 8, 2022 under 42 U.S.C. § 1983. [Doc. No. 1]. The undersigned judge referred the matter to United States Magistrate Judge Suzanne Mitchell for preliminary proceedings. On January 9, 2023, Judge Mitchell issued a Report and Recommendation [Doc. No. 9], and Mr. Kimble filed an Objection to the Report and Recommendation on February 1, 2023, postmarked on January 30, 2023. [Doc. No. 11].¹

On November 9, 2022, Judge Mitchell granted Mr. Kimble leave to proceed without prepayment of the full filing fee but required Mr. Kimble to pay the fee of \$350.00 as set forth in the order and as required by statute, 28 U.S.C. § 1915(b)(1). [Doc. No. 5 at 1].² The order required Mr. Kimble to pay an initial partial filing fee of \$2.96 by

¹ Mr. Kimble also filed a letter prior to his Objection, which was postmarked on January 6, 2023, but not filed until it was received on January 9, 2023, which was after Judge Mitchell issued her Report and Recommendation earlier that same date. *See* [Doc. No. 10].

² The full fee is \$402.00, which consists of a \$350.00 filing fee and a \$52.00 administrative fee. *See* [Doc. No. 1 at 1–2] (explaining that if the court grants your

November 30, 2022. [*Id.*]. Judge Mitchell's order further required that after payment of the initial partial filing fee, Mr. Kimble must make monthly payments until the total filing fee of \$350.00 is paid in full. [*Id.* at 2].³ Judge Mitchell advised Mr. Kimble that failure to timely pay the filing fee could result in dismissal of this action without prejudice.

On February 6, 2023, Mr. Kimble paid the initial partial filing fee of \$2.96, with a balance remaining of \$347.04. [Doc. No. 12]. Having paid the initial partial filing fee, the Court finds Mr. Kimble's action should not be dismissed. Mr. Kimble still is responsible for making monthly payments of 20 percent of the preceding month's income credited to his prison account(s) until he has paid the total filing fee of \$350. 28 U.S.C. § 1915(b)(2).

Accordingly, the Court DECLINES to adopt the Report and Recommendation [Doc. No. 9]. Given the passage of time since Mr. Kimble's last filing in this action, by separate Order, the Court will require him to provide his current address. Otherwise, the Court RE-REFERS this matter to United States Magistrate Judge Suzanne Mitchell for consideration of Mr. Kimble's Complaint [Doc. No. 1] and for any further orders necessary to accomplish Judge Mitchell's prior orders dated November 9, 2022 and

request to proceed in forma pauperis, the \$52 administrative fee will not be assessed and your total filing fee will be \$350).

³ Specifically, the November 9, 2022, order states in relevant part: "The Court further orders that after payment of the initial partial filing fee, Plaintiff must make monthly payments of 20 percent of the preceding month's income credited to his prison account(s) until he has paid the total filing fee of \$350. 28 U.S.C. § 1915(b)(2). This Court will enter an order directing the agency having custody of Plaintiff to collect and forward such monthly payments to the Clerk of the Court each time the institutional account balance(s) exceed(s) \$10.00 until he pays the filing fee in full. *Id.* Interference by Plaintiff in the submission of these funds will lead to the dismissal of this action." [Doc. No. 5 at 2]. The order further provides that the Clerk of Court shall not issue process until further order of the Court. [*Id.* at 3].

November 30, 2022 [Doc. Nos. 5, 8].

The Court again warns Mr. Kimble that failure to comply with orders and deadlines in this case issued by the undersigned judge or by Judge Mitchell will result in dismissal of this action, which may operate as a dismissal with prejudice or bar some or all of Mr. Kimble's claims.

IT IS SO ORDERED this 24th day of August 2023.



JODI W. DISHMAN
UNITED STATES DISTRICT JUDGE